

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Romero Analyst: Darrine Distefano Bill Number: SB 1496
Related Bills: See Legislative History Telephone: 845-6458 Amended Date: April 12, 2004
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Corporations/Tax Disclosure Statement

SUMMARY

This bill would require publicly traded companies, financial institutions, and insurance companies to disclose specific information to the Secretary of State (SOS).

SUMMARY OF AMENDMENTS

The April 12, 2004, amendments made the following changes:

- Replaces the term "publicly traded company with the term "reporting entity,"
- Adds the term "domestic stock corporations" and "foreign corporations,"
- Requires any amendments and filings made after 90 days after the original statement to be made public within 90 days after the filing with the SOS, and
- Makes various other technical changes.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

The author's office indicates that the purpose of this bill is to reveal the true tax burdens of California businesses so that informed decisions about state tax policy can be made.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative beginning on or after January 1, 2005.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

In January 2002, the Sarbanes-Oxley Act of 2002 established broader powers for the Securities and Exchange Commission (SEC) to regulate corporate governance, financial disclosure, and the practice of public accounting. Under this act, existing federal regulations require a public corporation to review the disclosures for sources of revenues, method of accounting, and material considerations when evaluating the quality and uncertainties surrounding revenue-generating activity so it is presented in a manner that is not misleading to the public.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

4/26/04

SEC requires most publicly traded companies to file a report (Form 10-K) with the SEC on an annual basis. This report is a comprehensive overview of the company's business and financial condition. The form may include the following statements: a balance sheet, statements of income, and statements of cash flows. Currently, Form 10-K must be filed with the SEC within 90 days after the end of the company's fiscal year. Once Form 10-K is filed, companies must give their shareholders a copy upon request. This form can also be viewed by the public on the SEC website.

Existing state law requires domestic and foreign corporations, not including financial corporations or insurers, to file with the SOS an annual statement of information disclosing the names and addresses of its directors, the names and addresses of its officers, the address of its principal office in California, its principal type of business, and information regarding its agent for serving of process. Existing law further requires a publicly traded corporation, not including a financial or insurance company, to disclose to the SOS information concerning its independent auditor, annual compensation paid to directors and officers, and loans made by the corporation to any of its directors. This disclosure should also include any bankruptcies filed by the corporation, its directors or officers, any fraud convictions by its directors or officers, and any other violations of federal securities or banking laws for which the corporation has been found liable. The Secretary of State is required to make these statements available for public inspection.

Existing state law prohibits the disclosure of any return information, except as specifically authorized by statute. The Revenue & Taxation Code (R&TC) defines "return information" as a taxpayer's identity, nature, source, or amount of its income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments.

Under the corporation tax law, a taxpayer is defined as any association, corporation, business, trust, or organization of any kind subject to corporation franchise tax. The R&TC provides that certain extraneous matters relative to a corporation may be disclosed only in response to a request regarding a named entity and only if there is no reason to believe that the information will be used for commercial list purposes. Those matters are: exact corporate title, corporate number, date of the commencement of business in California, taxable year adopted, filing date of return, name, date, and title of individuals signing affidavit to the return, due date of taxes, taxes unpaid, entity's address, and private address of officers and directors.

THIS BILL

This bill would require a reporting entity to file with SOS a statement with the following information from the most recent California tax return:

- A description of the method for computing the state tax liability, including, if any, the taxable income apportioned to this state.
- The amount of any exemption, deduction, credit, credit adjustment, credit carryover, excess tax credit, or credits subject to carryover in future years, including the effect of these items on the amount of taxable income or overall tax liability.
- A schedule of the reporting entity's net and gross income, including where applicable, gross profit, gross receipts or sales, net income, total net taxable income, income subject to apportionment, total net and gross direct premiums in or allocable to the state, taxable premiums, gross investment income, state taxable investment income, net underwriting profit, taxable net worth, and total adjusted taxable income.
- The amount of net income as reported on the federal tax return.
- A description of assets, including tangible property taxable in this state and admitted assets.

- The total amount of corporate income or franchise tax due and amount of taxes paid.

This bill would define a “reporting entity” as any of the following that are domestic stock or foreign corporations: a publicly traded company, a financial institution, and an insurer.

This bill would not require a reporting entity to file tax return information if that entity does not claim any credits or deductions to reduce its state’s tax liability.

This bill would require a reporting entity that files a combined tax report to include in its annual statement information from its combined report and to list all affiliated entities.

This bill would require a reporting entity that has filed an amended return to file an amended statement with SOS within 30 days of filing the amended return.

This bill would prohibit SOS from requesting additional information beyond the required items from a reporting entity. However, a reporting entity would be allowed to supplement the information provided in the statement, including all of the applicable schedules and attachments.

This bill would require any statement required to be disclosed by a reporting entity to be available and open to public inspection for at least three years following the original filing date of the statement.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not impact the department’s programs or operations.

LEGISLATIVE HISTORY

SB 389 (Romero, 2003/2004) and AB 1220 (Romero, 1999/2000) would have required a corporate taxpayer to provide the Franchise Tax Board (FTB) with a list of specific information when certain credits are claimed on their corporate tax returns. This information would be provided to the Legislature and the public, and also would be published on FTB’s website. The income tax provisions of SB 389 were amended out of the bill June 23, 2003. The Governor vetoed AB 1220. In the veto message Governor Davis stated his concern about the significant administrative costs that FTB would have incurred under this bill.

OTHER STATES’ INFORMATION

The states surveyed were *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California’s economy, business entity types, and tax laws.

Florida, Michigan, and Minnesota do not require a corporation to file a separate return or schedule with specified information.

Illinois, Massachusetts, and New York require corporations to file an annual report with specific information such as name of corporation, gross receipts, sales and profit, tax, and credits taken. *Massachusetts* requires a corporation to list the amount of credit taken. This information is available to the public. This annual report does not have to be filed with a corporation’s tax return.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

ARGUMENTS/POLICY CONCERNS

All of the California income tax items this bill would require the reporting entity to disclose to the SOS are currently considered confidential tax information. This bill could be interpreted to conflict with existing state law.

California has a self-assessed tax system that relies on the responsiveness of the individual and corporate taxpayer to report the proper tax. If tax information is used or disclosed for reasons beyond reporting for tax purposes, it is unclear what impact, if any, there may be on the self-assessing tax system.

LEGISLATIVE STAFF CONTACT

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